



## TEXAS DEPARTMENT OF INSURANCE

### Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

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## MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

### GENERAL INFORMATION

**Requestor Name**

ACADIAN AMBULANCE SERVICES

**Respondent Name**

INDEMNITY INSURANCE CO OF NORTH AMERICA

**MFDR Tracking Number**

M4-15-3927-01

**Carrier's Austin Representative**

Box Number 15

**MFDR Date Received**

August 04, 2015

### REQUESTOR'S POSITION SUMMARY

**Requestor's Position Summary:** "Acadian Ambulance Services, Tax ID 720701964, filed a claim for payment of a ground ambulance transport to Gallagher Bassett for payment. March 10, 2014 denied as Invalid Modifier. April 4, 2014 Acadian Ambulance submitted an appeal letter. June 3, 2014 denied as a duplicate claim. July 8, 2014 Acadian Ambulance submitted with another appeal letter. August 15, 2014 denied as duplicate claim. September 16, 2014 Acadian Ambulance submitted another appeal letter. April 38, 2015 denied as invalid modifier. June 29, 2015 denial as duplicate claim and timely filling."

**Amount in Dispute:** \$531.73

### RESPONDENT'S POSITION SUMMARY

**Respondent's Position Summary:** "This is a medical fee dispute concerning ambulance charges on January 29, 2014. The DWC-60 is file stamped on August 4, 2015. A provider must request medical dispute resolution on a fee issue or a retrospective medical necessity review within one year of the date of service. 28 TAC 133.307(c)(1). If there is a pending compensability, extent of injury dispute, or liability dispute, that deadline is extended "60 days after the date the requestor receives the final decision, inclusive of all appeals, on compensability, extent of injury or liability." 28 TAC 133.306(c)(1)(B)(i). None of the exceptions are applicable. According, the request is untimely and the Division has no jurisdiction to conduct review of the matter."

**Response Submitted by:** Flahive, Ogden & Latson

### SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
January 29, 2014	CPT Code A0428 and A0425	\$531.73	\$0.00

### FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and applicable rules of the Texas Department of Insurance, Division of Workers' Compensation.

## **Background**

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
  - 18 – Duplicate claim/service
  - BL – Date(s) of service exceed (95) day time period for submission per Rule 408.027 and Bulletin NO B-0037-05A
  - BL – To avoid duplicate bill denial for all recon/adjustments/additional pymnt/requests, submit a copy of the EOR or clear notation that a recon

## **Issues**

1. Does the federal McCarran-Ferguson exempt the applicable Texas Workers' Compensation medical fee guideline from preemption by the federal Airline Deregulation Act?
2. Did the requestor waive the right to medical fee dispute resolution?

## **Findings**

1. The requestor maintains that the Federal Aviation Act, as amended by the Airline Deregulation Act (ADA) of 1978, 49 U.S.C. §41713, preempts the authority of the Texas Labor Code to apply the Division's medical fee schedule amount. This threshold legal issue was considered by the State Office of Administrative Hearings (SOAH) in *PHI Air Medical v. Texas Mutual Insurance Company*, Docket number 454-12-7770.M4, *et al.* SOAH held that "the Airline Deregulation Act does not preempt state worker's compensation rules and guidelines that establish the reimbursement allowed for the air ambulance services . . . rendered to injured workers (claimants)." SOAH found that:

In particular, the McCarran-Ferguson Act explicitly reserves the regulation of insurance to the states and provides that any federal law that infringes upon that regulation is preempted by the state insurance laws, unless the federal law specifically relates to the business of insurance. In this case, there is little doubt that the worker's compensation system adopted in Texas is directly related to the business of insurance . . .

The Division agrees. The Division concludes that its jurisdiction to consider the medical fee issues in this dispute is not preempted by the Federal Aviation Act, or the Airline Deregulation Act of 1978, based upon SOAH's threshold issue discussion and the information provided by the parties in this medical fee dispute. The disputed services will therefore be decided pursuant to Texas Labor Code §413.031 and all applicable rules and fee guidelines of the Texas Department of Insurance, Division of Workers' Compensation.

2. 28 Texas Administrative Code §133.307(c)(1) states:  
Timeliness. A requestor shall timely file the request with the division's MFDR Section or waive the right to MFDR. The division shall deem a request to be filed on the date the MFDR Section receives the request. A decision by the MFDR Section that a request was not timely filed is not a dismissal and may be appealed pursuant to subsection (g) of this section.

(A) A request for MFDR that does not involve issues identified in subparagraph (B) of this paragraph shall be filed no later than one year after the date(s) of service in dispute.

The date of the service in dispute is January 29, 2014. The request for medical fee dispute resolution was received in the Medical Fee Dispute Resolution (MFDR) Section on August 04, 2015. This date is later than one year after the date(s) of service in dispute. Review of the submitted documentation finds that the disputed services do not involve issues identified in §133.307(c)(1)(B). The Division concludes that the requestor has failed to timely file this dispute with the Division's MFDR Section; consequently, the requestor has waived the right to medical fee dispute resolution.

## **Conclusion**

For the reasons stated above, the Division finds that the requestor has not established that additional reimbursement is due. As a result, the amount ordered is \$0.00.

## ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 reimbursement for the disputed services.

### Authorized Signature

_____	_____	8/28/15
Signature	Medical Fee Dispute Resolution Officer	Date

## YOUR RIGHT TO APPEAL

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, effective May 31, 2012, *37 Texas Register 3833*, **applicable to disputes filed on or after June 1, 2012.**

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MFDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**